



## Idaho Department of Environmental Quality DRAFT §401 Water Quality Certification

August 10, 2011

**404 Permit Application Number:** Regional General Permit-Benthic Barriers (RGP-BB)

**Applicant/Authorized Agent:** U.S. Army Corps of Engineers, Walla Walla District

**Receiving Water Body Name/Assessment Unit:** All waters of the U.S. in Idaho except waters listed as exclusion areas.

**Receiving Water Body Conditions:** Could be waters of low to high water quality, in rivers, streams, lakes or reservoirs.

**Project Location:** State of Idaho

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Pursuant to the provisions of Section 401(a)(1) of the Federal Water Pollution Control Act (Clean Water Act), as amended, 33 USC Section 1341 (a)(1), and Idaho Code §§ 39-101 et.seq., and 39-3601 et.seq., the Idaho Department of Environmental Quality (DEQ) has authority to review activities receiving Section 404 dredge and fill permits and issue a water quality certification decision.

Based upon its review of the permit application and associated information for the above-referenced activity, DEQ certifies that if the permittee complies with the terms and conditions imposed by the permit along with the conditions set forth in this water quality certification, then there is reasonable assurance the activity will comply with the applicable requirements of Sections 301, 302, 303, 306, and 307 of the Clean Water Act, including the Idaho Water Quality Standards (WQS) (IDAPA 58.01.02) and other appropriate water quality requirements of State law.

This certification does not constitute authorization of the permitted activities by any other state or federal agency or private person or entity. This certification does not excuse the permit holder from the obligation to obtain any other necessary approvals, authorizations or permits.

### Project Description

This project proposes to authorize the discharge of fill materials, structures and/or work associated with the placement of temporary benthic (bottom) barriers to control the growth of invasive, noxious aquatic vegetation primarily in lakes and reservoirs, but also possibly streams and rivers.

## Receiving Water Body Description

Any waters of the U.S. including lakes, reservoirs, streams or rivers. These waters may be fully supporting or not supporting their beneficial uses, could be in any of 5 categories in Idaho's 2008 Integrated Report, and be either Tier I or II for Antidegradation purposes.

## Antidegradation

Idaho's antidegradation policy (IDAPA 58.01.02.051) requires that existing uses of all waters in the state be maintained (Tier 1 protection). In addition, where the quality of water is better than that required to maintain beneficial uses, then DEQ must assure that no degradation will occur unless, after allowing an opportunity for public comment and intergovernmental coordination, degradation is deemed to be necessary to accommodate important economic or social development (Tier 2 protection).

Waters that could come under this general permit could be supporting or not supporting their beneficial uses, could be in any of the 5 categories of the Integrated Report and could be either Tier I or II for antidegradation. As noted above all waters are protected for Tier I, as set by water quality standards. Tier II waters have water quality better than water quality standards and also will be protected under this permit due to the temporary nature of this activity and the negligible impact it will likely have on water quality. DEQ feels the permit conditions and notifications provide the protection needed to maintain existing water quality and will not contribute to a decline in water quality for either aquatic life or recreation uses. DEQ agrees with the Army Corps of Engineers that the long term benefit to water quality and beneficial uses of invasive species eradication outweighs the potential minor impact, if any, to water quality.

The primary pollutant of concern for this activity is sediment. DEQ believes the three (3) required notification and approval procedures along with the thirteen (13) proposed conditions in the permit ensure that the use of Benthic Barriers for the control of invasive species will reduce or minimize potential sediment impacts. This will be achieved by implementing the following:

- requiring the invasive species presence be confirmed,
- limiting the size of the barriers to 500 square feet,
- placing them below the high water mark,
- weighting barrier frames to the bottom of the lake,
- periodic inspection,
- limiting the time barriers can be in one place to minimize sediment build up,
- requiring barriers to be removed by October 31,
- requiring construction waste to be disposed in an upland location (not the water body),
- requiring sediment control activities outside those described in the permit get an individual permit,
- requiring barrier placement not interfere with navigation, and
- providing for endangered species consultation where Endangered Species Act organisms are involved.

As part of this certification, DEQ is requiring the applicant to comply with various conditions to protect water quality and to meet Idaho WQS, including the water quality criteria applicable to sediment. During the construction phase, the applicant will implement, install, maintain, monitor and adaptively manage best management practices geared toward reducing erosion and minimizing turbidity levels in receiving water bodies downstream of the project.

As long as the project is conducted in accordance with the provisions of the project plans, Section 404 permit, mitigation plan, and conditions of this certification, then there is reasonable assurance the project will comply with the States' numeric and narrative criteria. The numeric and narrative criteria are set at levels which protect and maintain designated and existing beneficial uses. Furthermore, there is reasonable assurance the projects will be conducted in a manner that will maintain and protect the water quality of the relevant waterbodies. Therefore, DEQ concludes that this activity complies with Idaho's antidegradation policy.

## **Conditions Necessary to Assure Compliance with Water Quality Standards or Other Appropriate Water Quality Requirements of State Law**

### *General Conditions*

1. This certification authorizes the activity as described in the notice of intent to apply for coverage under the general permit.
2. A copy of this certification must be kept on the job site and readily available for review by any contractor working on the project as well as any federal, state, or local government personnel.
3. The applicant shall provide access to project sites and all mitigation sites upon request by DEQ personnel for site inspections, monitoring, and/or to ensure that conditions of this certification are being met.
4. The applicant is responsible for all work done by contractors and must ensure the contractor(s) are informed of and follow all the conditions described in this certification and the Section 404 permit.

## **Right to Appeal Final Certification**

The final Section 401 Water Quality Certification may be appealed by submitting a petition to initiate a contested case, pursuant to Idaho Code § 39-107(5), and the Rules of Administrative Procedure Before the Board of Environmental Quality, IDAPA 58.01.23, within 35 days of the date of the final certification.

Questions regarding the actions taken in this certification should be directed to Michael McIntyre, Idaho Department of Environmental Quality – State Office, 208-373-0570 or [Michael.McIntyre@deq.idaho.gov](mailto:Michael.McIntyre@deq.idaho.gov).

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